

Appendix A: Regulations and Policies

This appendix describes the key regulations and policies that form the legal context for development of the *South Fork Merced River Bridge Replacement Environmental Assessment*.

National Park Service Enabling Legislation

Act of June 30, 1864, 13 Stat. 325, 16 USC Section 48. Authorizes a grant to California for the “Yosemite Valley,” and for land embracing the “Mariposa Big Tree Grove.” This tract was “to be held for public use, resort, and recreation” by the state of California, and to “be inalienable for all time.”

Act of August 25, 1916 (National Park Service Organic Act), PL 64- 235, 16 USC Section 1, *et seq.* As amended. On August 15, 1916, Congress created the National Park Service with the National Park Service Organic Act. This act, as reaffirmed and amended in 1970 and 1978, establishes a broad framework of policy for the administration of national parks:

“The Service thus established shall promote and regulate the use of the Federal areas known as National Parks, Monuments, and Reservations... by such means and measures as to conform to the fundamental purpose of the said Parks, Monuments, and Reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

General Legislation and Regulations

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500–1508). The Council on Environmental Quality regulations for implementing NEPA establish the process by which federal agencies fulfill their obligations under the NEPA process. The Council on Environmental Quality regulations ascertain the requirements for environmental assessments and environmental impact statements that document the NEPA process. The Council on Environmental Quality regulations also define such key terms as *cumulative impact*, *mitigation*, and *significantly* to ensure consistent application of these terms in environmental documents. This South Fork Merced River Bridge Replacement Project was prepared as directed in the Council on Environmental Quality regulations.

Fish and Wildlife Coordination Act. The objective of the Fish and Wildlife Coordination Act is to provide that wildlife conservation receive equal consideration and be coordinated with other features or water resources development programs. Sections 1 and 2 of the act mandate that fish and wildlife receive equal consideration with water resources development programs throughout planning, development, operation, and maintenance. Whenever a federal agency proposes to impound, divert, channelize, or otherwise alter or modify any stream, river, or other body of water for any purpose, the agency must first consult and coordinate its actions and projects with the U.S. Fish and Wildlife Service. This consultation and coordination process addresses ways to conserve wildlife resources by preventing loss of and damage to such resources as well as to further develop and improve these resources.

National Environmental Policy Act (NEPA) of 1970. PL 991- 190, 83 Stat. 852, 42 USC Section 4341 *et seq.* The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and

enhance the environment. Regulations implementing NEPA are set forth by the Council on Environmental Quality. The NEPA process guides the overall planning process for the *South Fork Merced River Bridge Replacement Environmental Assessment*.

Wild and Scenic Rivers Act of 1968, as amended (PL 90- 542; 16 USC 12371- 1287). This act established the National Wild and Scenic Rivers System and designated the first Wild and Scenic Rivers. The act requires a comprehensive management plan for designated rivers and contains guidance for their management, particularly with regard to free- flowing condition and Outstandingly Remarkable Values. Section 3(a)(62) contains the language of the 1987 act that added the Merced River to the National Wild and Scenic Rivers System. All actions proposed by this project will protect and enhance the values that are recognized by the Merced Wild and Scenic River designation.

Wild and Scenic Rivers Guidelines, 1982. These guidelines were developed jointly by the U.S. Department of Agriculture and U.S. Department of Interior; the two departments who manage designated rivers through their bureaus. The guidelines are intended to foster consistent interpretation and application of the Wild and Scenic Rivers Act.

Natural Resources Legislation

Bald Eagle Protection Act. No person within the United States or any place subject to the jurisdiction thereof, shall possess, sell, purchase, barter, offer to sell, transport, export, or import at any time or in any manner any bald eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof. The Secretary of the Interior can permit the taking, possession, and transportation of specimens thereof for scientific or exhibition purposes or for the religious purposes of American Indian tribes if the action is determined to be compatible with the preservation of the bald eagle or golden eagle.

Clean Air Act, as amended, PL Chapter III60, 69 Stat. 322,42 USC Section 7401 *et seq.* Section 118 of the Clean Air Act requires all federal facilities to comply with existing federal, state, and local air pollution control laws and regulations. The National Park Service works in conjunction with the Mariposa County Air Pollution Control District to ensure that all construction and demolition activities meet these requirements.

Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) of 1977 (33 USC 1251 *et seq.*). The Clean Water Act provides for the restoration and maintenance of the physical, chemical, and biological integrity of the nation's waters. Section 404 of the act prohibits the discharge of fill material into navigable water of the United States, including wetlands, except as permitted under separate regulations by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency. The placement of fill in wetlands should be avoided if there are practicable alternatives.

California Endangered Species Act. The California Endangered Species Act expanded upon the original plant protection act and enhanced legal protection for plants and wildlife. The California Endangered Species Act parallels the policies of the Federal Endangered Species Act. The state legislation was written to protect state endangered and threatened plant and animal species whose continued existence in California is in jeopardy. The California Endangered Species Act and Sections 2050 and 2097 of the Fish and Game Code prohibit "take" of plant and animal species designated by the California Fish and Game Commission as either endangered or threatened.

California Fish and Game Code. Sections 3511 (birds), 4700 (mammals), 5050 (reptiles and amphibians), and 5515 (fish) of the California Fish and Game Code designate certain species as "fully protected." Fully protected species, or parts thereof, may not be taken or possessed at any time without permission by the California Department of Fish and Game. Section 3503 of the

California Fish and Game Code affords protection to bird nests and birds of prey (orders Falconiformes or Strigiformes).

California Native Plant Protection Act. State listing of plant species began in 1977 with the passage of the Native Plant Protection Act. The act directed the California Department of Fish and Game to carry out the legislature's intent to "preserve, protect, and enhance endangered plants in this state." The act gave the California Fish and Game Commission the power to designate native plants as endangered or rare, and to require permits for collecting, transporting, or selling such plants. When the California Endangered Species Act was passed, it expanded upon the Native Plant Protection Act and enhanced legal protection for plants. To align with federal regulations, the California Endangered Species Act adopted the categories "threatened" and "endangered" species. It grandfathered all "rare" animals into the act as threatened species, but did not do so for rare plants. Thus, there are three listing categories for plants in California: rare, threatened, and endangered.

Clean Water Act Amendments of 1987. The 1987 amendments to the act required that the Environmental Protection Agency establish regulations for the issuance of municipal and industrial stormwater discharge permits as part of the National Pollutant Discharge Elimination System. The final Environmental Protection Agency regulations were published in November 1990. These regulations apply to any construction activities that disturb more than five acres of land.

Endangered Species Act of 1973, as amended, PL 93- 205, 87 Stat. 884, 16 USC Section 1531 *et seq.* The Endangered Species Act protects threatened and endangered species, as listed by the U.S. Fish and Wildlife Service, from unauthorized take, and directs federal agencies to ensure that their actions do not jeopardize the continued existence of such species. Section 7 of the act defines federal agency responsibilities for consultation with the U.S. Fish and Wildlife Service and requires preparation of a biological assessment to identify any threatened or endangered species that is likely to be affected by the Preferred Alternative. The National Park Service initiated and maintained formal consultation with the U.S. Fish and Wildlife Service throughout the compliance process of *South Fork Merced River Bridge Replacement Environmental Assessment* in order to meet obligations under the Endangered Species Act.

Migratory Bird Treaty Act. The Migratory Bird Treaty Act regulates or prohibits taking, killing, possession of, or harm to migratory bird species listed in Title 50 CFR Section 10.13. This act is an international treaty for the conservation and management of bird species that may migrate through more than one country and is enforced in the United States by the U.S. Fish and Wildlife Service. Hunting of specific migratory game birds is permitted under the regulations listed in Title 50 CFR 20. The act was amended in 1972 to include protection for migratory birds of prey (raptors).

Porter- Cologne Water Quality Control Act (California Water Code, Section 13020). Under the authority of the Porter- Cologne Act and federal Clean Water Act, Regional Water Quality Control Boards act as regional agencies for the State Water Resources Control Board and are responsible for regional enforcement of water quality laws and coordination of water quality control activities. The regional board for the Yosemite area is the Central Valley.

Resource Conservation and Recovery Act, as amended (RCRA), PL 94- 580, 30 Stat. 1148, 42 USC Section 6901 *et seq.* This act establishes a regulatory structure for the management of solid and hazardous waste from the point of generation to disposal. In particular, applicable provisions include those that address underground storage tanks and sites contaminated with elements identified under Federal and State Resource Conservation and Recovery Act regulations.

Cultural Resources Legislation

Antiquities Act of 1906, PL 59- 209, 34 Stat. 225, 16 USC Section 432 and 43 CFR 3. This act provides for the protection of historic or prehistoric remains, “or any antiquity,” on federal lands. It protects historic monuments and ruins on public lands. It was superseded by the Archeological Resources Protection Act (1979) as an alternative federal tool for prosecution of antiquities violations in the National Park System.

Archeological Resources Protection Act of 1979, OK 96- 95, 93 Stat. 712, 16 USC Section 470aa *et seq.* and 43 CFR 7, subparts A and B, 36 CFR. This act secures the protection of archeological resources on public or American Indian lands and fosters increased cooperation and exchange of information between private, government, and the professional community in order to facilitate the enforcement and education of present and future generations. It regulates excavation and collection on public and American Indian lands. It requires notification of American Indian tribes who may consider a site of religious or cultural importance prior to issuing a permit. The act was amended in 1988 to require the development of plans for surveying public lands for archeological resources and systems for reporting incidents of suspected violations.

National Historic Preservation Act of 1966, as amended, PL 89- 665, 80 Stat. 915, 16 USC Section 470 *et seq.* and 36 CFR 18, 60, 61, 63, 68, 79, 800. The National Historic Preservation Act requires agencies to take into account the effects of their actions on properties listed in or eligible for listing in the National Register of Historic Places. The Advisory Council on Historic Preservation has developed implementing regulations (36 CFR 800), which allow agencies to develop agreements for consideration of these historic properties. In 1999, Yosemite National Park, in consultation with the Advisory Council, the California State Historic Preservation Officer, American Indian tribes and the public, developed a Programmatic Agreement for planning, design, construction, operations and maintenance activities. This 1999 Programmatic Agreement provides a process for compliance with National Historic Preservation Act, and includes stipulations for identification, evaluation, treatment, and mitigation of adverse effects for actions affecting historic properties. The National Park Service will follow stipulations of this Programmatic Agreement for all future planning and design projects. The Programmatic Agreement allows the National Park Service to implement standard mitigating measures for some actions, if the State Historic Preservation Office and the public are notified and provided an opportunity to comment.

Native American Graves Protection and Repatriation Act, PL 101- 601, 104 Stat. 3049, 25 USC Sections 3001- 3013. This act assigns ownership or control of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that are excavated or discovered on federal lands or tribal lands to lineal descendants or culturally affiliated Native American groups.

Executive Orders

Executive Order 11593: Protection and Enhancement of the Cultural Environment. This Executive Order instructs all federal agencies to support the preservation of cultural properties. It directs them to identify and nominate cultural properties under their jurisdiction to the National Register of Historic Places and to “exercise caution... to assure that any federally owned property that might qualify for nomination is not inadvertently transferred, sold, demolished, or substantially altered.”

Executive Order 11988: Floodplain Management. This Executive Order requires federal agencies to avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplains, and to avoid development in floodplains whenever there is a

practical alternative. If a Preferred Alternative is found to be in the applicable regulatory floodplain, the agency shall prepare a floodplain assessment, known as a Statement of Findings.

Executive Order 11990: Protection of Wetlands. This Executive Order established the protection of wetlands and riparian systems as the official policy of the federal government. It requires all federal agencies to consider wetland protection as an important part of their policies and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands.

Executive Order 13112: Invasive Species. This Executive Order prevents the introduction of invasive species and directs federal agencies to not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species. Actions proposed in the *South Fork Merced River Bridge Replacement Environmental Assessment* include measures to prevent the introduction and spread of invasive species.

Department of Interior – Director’s Orders

Director’s Orders provide guidance for implementing certain aspects of National Park Service policy. Copies of those that have been completed may be obtained by contacting the National Park Service Office of Policy or by accessing the National Park Service Web site. The following Director’s Orders may be relevant to the *South Fork Merced River Bridge Replacement Environmental Assessment* planning process.

Director’s Order – 1: The Directives System. The purpose of this Director’s Order is to further refine the National Park Service Directives System, first established by Director’s Order – 1 on September 1, 1996. The Directives System is a three- level set of documents that give National Park Service managers and staff comprehensive guidance on service- wide policy and required and/or recommended practices and procedures. The Directives System is the means by which the Director delegates line and functional authorities and assigns responsibilities. It reflects our organizational values of teamwork, delegation to the most effective level, empowerment of employees, accountability, and reduction in overall paperwork.

Director’s Order – 2: Park Planning. This Director’s Order revises and replaces the policies and guidance included in Chapter 2 of the National Park Service Management Policies (1988) and the National Park Service- 2 Planning Process Guideline (1982) as they relate to park planning. This Director’s Order documents the decision- making processes that result in the goals and actions specific to each unit of the National Park System and those units of the National Trails System administered by the National Park Service. Park planning is a vital intermediary step that links service- wide planning and decision making to park operations.

Director’s Order – 12: Conservation Planning, Environmental Impact Analysis and Decision- making. Director’s Order – 12 provides the National Park Service’s agency guidance on implementing the National Environmental Policy Act (NEPA). The Department of the Interior produced its NEPA regulations as Part 516 of its departmental manual, and the National Park Service produced several NEPA handbooks. The last update, National Park Service- 12 was issued in 1982. Director’s Order - 12 is an update and revision of National Park Service- 12, and it supercedes the 1982 version. Although it is termed a handbook, most of the sections derive in whole or in part from the Council on Environmental Quality regulation or Department of Interior NEPA guidelines, giving them the force of law. Under the terms of the National Parks Omnibus Management Act of 1998, the “Secretary shall take such measures as are necessary to assure the full and proper utilization of the results of scientific study for park management decisions. In each case in which an action undertaken by the National Park Service may cause a significant adverse effect on a park resource, the administrative record shall reflect the manner in which unit resource studies have been considered.” The development of alternative, analysis of impacts, and incorporation of the best available information, coupled with identification of environmentally

preferable courses of action as called for in Director's Order – 12, are among the steps required in meeting this obligation to the public. The *South Fork Merced River Bridge Replacement Environmental Assessment* was developed consistent with Director's Order – 12.

Director's Order – 28: Cultural Resource Management. The National Park Service, as steward of many of America's most important cultural resources, is charged to preserve them for the enjoyment of present and future generations. Management decisions and activities throughout the National Park System must reflect awareness of the irreplaceable nature of these resources. The National Park Service will protect and manage cultural resources in its custody through effective research, planning, and stewardship and in accordance with the policies and principles contained in the National Park Service Management Policies. The National Park Service will comply with the substantive and procedural requirements described in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Additionally, the National Park Service will comply with the 1995 Servicewide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers.

Director's Order – 50B: Occupational Safety and Health. The National Park Service has a continuing concern about the health and safety of its employees and others who spend time in the parks—whether as visitors, volunteers, contractors, concession employees, or in any other capacity. Those who participate in work or recreational activities in the parks are always, to some extent, exposed to the risk of accident, injury, or illness. In recognizing this, the National Park Service is committed to reducing these risks and the associated pain, suffering, and financial expense. The overall purposes of the National Park Service risk management program are to establish and implement a continuously improving and measurable risk management process that: (1) provides for the occupational safety and health of National Park Service employees; (2) provides for the safety and health of the visiting public; and (3) maximizes the utilization of National Park Service human and physical resources, and minimizes monetary losses through effective workers' compensation case management.

Director's Order – 77- 1: Wetland Protection. The wetland protection provisions of the 1980 National Park Service Floodplain Management and Wetland Protection Guidelines (45 Fed. Reg. 35916, minor revisions in 47 Fed. Reg. 36718), and any other conflicting instructions or delegations of authority, are superseded and replaced by this Director's Order and by Procedural Manual #71- 1. Approved in 1998, the manual was developed for use by the National Park Service in carrying out its responsibilities under Executive Order 11990. The general policies, requirements, and standards included in the manual are:

- No net loss of wetlands and a long- term goal of net wetland gain
- Parkwide wetlands inventories
- Restoration and enhancement of degraded wetland habitats
- Planning and siting to avoid or minimize effects to wetlands
- Restoration of degraded wetlands as compensation for adverse effects to wetlands
- Compliance with federal environmental regulations

Yosemite National Park Plans

Merced Wild and Scenic River Comprehensive Management Plan

The *Merced Wild and Scenic River Comprehensive Management Plan* provides a framework for decision making on future management actions within the Merced River corridor. This will be accomplished through the application of a consistent set of decision- making criteria and considerations composed of seven management elements: boundaries, classifications, Outstandingly Remarkable Value, the Section 7 determination process, management zoning, the River Protection Overlay, and the Visitor Experience and Resource Protection framework.

Resources Management Plan for Yosemite National Park

Approved in 1993, the Resources Management Plan addresses specific natural and cultural resources issues. Natural resource issues addressed include the role of fire in the ecosystem, non-native- plant control, forest pest control, horse and mule grazing, protection of special- status species, human/bear conflicts, other wildlife and fisheries management programs, and the park's research program. The *Resources Management Plan* also addresses management of cultural resources, including archeological and ethnographic resources, as well as cultural landscapes, museum collections, and historic structures.

Yosemite Fire Management Plan

Fire is a natural process of the Sierra Nevada and Yosemite National Park. The recurrence of fire shapes the ecosystems of the park, with many common plants exhibiting specific fire- adapted traits. The National Park Service adopted a *Fire Management Plan* in 1990 that provides clear guidelines regarding when and where to allow wildland and prescribed fires to burn. The National Park Service is in the process of updating its Fire Management Plan. The goal of natural and prescribed fire management in Yosemite is to restore or maintain natural fire regimes to the maximum extent possible so that natural ecosystems can operate essentially unimpaired by human interference.¹

Yosemite General Management Plan

The 1980 *General Management Plan* restates the park mission in the following management objectives:

- Conduct continuing research to gather and analyze information necessary for managing natural resources
- Restore altered ecosystems as nearly as possible to conditions that would exist had natural ecological processes not been disturbed
- Protect threatened and endangered plant and animal species and reintroduce, where practical, those species eliminated from the natural ecosystems
- Identify and perpetuate natural processes in park ecosystems
- Preserve, protect, and interpret cultural resources
- Permit only those types and levels of use or development that do not significantly impair park natural resources, and direct development and use to environments least vulnerable to deterioration
- Limit unnatural sources of air, noise, visual, and water pollution to the greatest degree possible

The plan proposed boundary changes and acquisitions, extensive changes to developed sites, and removal of cars from Yosemite Valley as a long- term goal.

Yosemite Human/Bear Management Plan

The goal of the *Human/Bear Management Plan* is to “restore the natural ecology, distribution, and behavior of black bears through control of human activities.” To this end, the plan directs specific actions and responsibilities to reduce the potential for bear/human interaction.

¹ In the *Fire Management Plan*, wildland fires are defined as those ignited by lightning and prescribed fires are defined as those ignited by management.

Yosemite Valley Plan

The National Park Service recently developed the *Yosemite Valley Plan* to implement the goals of the 1980 *General Management Plan* in Yosemite Valley. The *Yosemite Valley Plan* is designed to meet the resource preservation and visitor experience goals in Yosemite Valley, including natural and cultural resource management and restoration, visitor services and recreational opportunities, transportation, and employee housing.

Yosemite Vegetation Management Plan

The *Vegetation Management Plan* addresses the goals and objectives of managing the park's vegetative resources. These goals and objectives seek to:

- Delineate the legislative and administrative requirements that guide development of vegetation management objectives
- Refine the goals and objective for vegetation management established in the *Resources Management Plan*
- Describe the dynamic environment of vegetation within the park and the social, cultural, and natural processes that influence vegetation
- Discuss current vegetation management issues, information needs, and define management objectives, techniques, and strategies for achieving these objectives
- Provide an overview of the history of vegetation management
- Provide a summary of vegetation management planning needs to be addressed in the future, including the roles and responsibilities for planning implementation

Yosemite National Park Rules and Regulations

Fisheries Rules and Regulations

In general, Yosemite National Park has adopted the same fishing regulations as apply to the California Department of Fish and Game management region that contains the park, and requires a valid California fishing license. California Department of Fish and Game maintains jurisdiction over areas outside of Yosemite National Park, where it enforces rules regarding hunting and fishing. The National Park Service has exclusive jurisdiction in the park. Fishing licenses are available for sale at Yosemite Village and Tuolumne Meadows. Licenses can also be purchased in Wawona and El Portal. In 1992, the National Park Service instituted special fishery regulations for the Merced River corridor.

Merced River Management – Standard Operating Procedure

In 1993, the National Park Service ended the practice of removing fallen trees from the river within Yosemite Valley. Previously, fallen trees were removed for bridge protection and to reduce hazards to rafters. Today, fallen trees are considered beneficial for streambank protection, aquatic organisms, and overall health of the riparian and aquatic corridor.